

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA)	CRIMINAL NO: 2:21-CR-00472
)	
v.)	
)	NOTICE OF MOTION AND
AMY PINCKNEY)	MOTION FOR VARIANCE
)	
_____)	

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through her undersigned counsel, will move before this Court, at such time as the Court schedules, for a variance in her sentence.

As a result of the United States Supreme Court decision in United States v. Booker, 543 US 220 (2005), the Sentencing Guidelines are now effectively advisory.

The Fourth Circuit Court of Appeals has addressed this issue. According to United States v. Hughes, 396 F3d 374 (2005), the United States Sentencing Guidelines are no longer mandatory. The Guidelines are still important at sentencing, but are one of several components that should be weighed in calculating a sentence. In addition to considering the Guidelines, the Court should consider all of the factors in 18 USC § 3553 (a). See Gall v. United States, 552 US 38 (2007). In fact, Courts may vary from the guideline ranges based solely on policy considerations, including disagreements with the Guidelines (Rita v. United States, 551 US 338 (2007)).

18 USC § 3553 mandates that the District Court impose sentences “sufficient, but not greater than necessary” in light of the purposes of sentencing.

BACKGROUND

The Defendant, Amy Pinckney, was a licensed speech therapist, residing and practicing in

the Beaufort County area from 2000 to 2021. During this period, she served children of military personnel and billed TRICARE, a health care insurance program of the United States Department of Defense. An investigation into Amy's billing revealed that she had submitted false billings over a period of several years. Amy pled guilty on September 8, 2021 before this court under a written plea agreement to 18 U.S.C. § 1347. The plea agreement stipulated an agreed to loss amount of One Hundred Fifty Thousand Dollars (\$150,000.00).

PERSONAL CHARACTERISTICS

_____Amy is Fifty (50) years of age and is married with two boys, ages Fourteen (14) and Eleven (11). She attended the University of South Carolina in Columbia, South Carolina. Amy's husband is Jeff, the Director of Operations for Fripp Island Resort.

After having established a speech therapy practice over the last Twenty (20) years. Amy's license has been suspended as a result of her guilty plea and revocation is certain.

VARIANCE CRITERIA

Amy respectfully requests this court consider a variance from the guidelines range of Ten (10) - Sixteen (16) months indicated for a total offense level of Twelve (12) and criminal history category of One (1). Reason for variance request as follows pursuant to Section 3553A.

1. Amy's family circumstance of being a mother to two (2) young sons, both at home, in school and in their formative years dictates that a downward variance to allow for a probationary/home detention sentence is worth of consideration.
2. Amy, in addition to any criminal penalty the court hands down, will suffer a crushing blow by virtue of the felony plea. South Carolina Labor, Licensing and Regulation has suspended and is certain to revoke her license necessary to continue her career as a speech therapist. She will not lose her license, but her

career and her livelihood. Punishment comes in more than one (1) form and here the collateral damage to her career is substantial and variance worthy. A sentence of incarceration is greater than is necessary to effectuate the goal of 18 U.S.C. 3553.

3. Defendant's financial situation is not good, but she is desirous of making restitution. A small variance would allow for a probationary sentence of up to Five (5) years whereas a sentence of incarceration would result in at most a period of supervised release of Three (3) years. It is during these periods that the court can maximize efforts to have the Defendant pay restitution.

Therefore, based upon the characteristics of this Defendant and the characteristics and nature of this offense, the Defendant respectfully requests a variance.

s/ L. Morgan Martin
LAW OFFICES L. MORGAN MARTIN, P. A.
1121 Third Avenue
Conway, South Carolina 29526
843-248-3177
Attorney for Defendant

December 8, 2021

Conway, South Carolina